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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-313

13 **JOHN S. KERR**  
7043 Fielding Street  
14 Ypsilanti, MI 48197

**A C C U S A T I O N**

15 Registered Nurse License No. 546059

16 Respondent.

17  
18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the  
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
22 Affairs.

23 2. On or about July 29, 1998, the Board issued Registered Nurse License  
24 Number 546059, to John S. Kerr ("Respondent"). The license expired on June 30, 2008, and has  
25 not been renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 2750 provides, in  
3 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
4 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
5 2750) of the Nursing Practice Act.

6 4. Code section 2764 provides, in pertinent part, that the expiration of a  
7 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
8 against the licensee or to render a decision imposing discipline on the license. Under Code  
9 section 2811(b), the Board may renew an expired license at any time within eight years after the  
10 expiration.

11 STATUTORY PROVISIONS

12 5. Code section 2761 states, in pertinent part:

13 "The board may take disciplinary action against a certified or licensed nurse or  
14 deny an application for a certificate or license for the following:

15 (a) Unprofessional conduct, which includes, but is not limited to, the following:

16 (1) Incompetence, or gross negligence in carrying out usual certified or licensed  
17 nursing functions."

18 REGULATORY PROVISIONS

19 6. California Code of Regulations, title 16, section 1443, states:

20 As used in Section 2761 of the code, 'incompetence' means the lack of  
21 possession of or the failure to exercise that degree of learning, skill, care and  
22 experience ordinarily possessed and exercised by a competent registered nurse as  
described in Section 1443.5.

23 COST RECOVERY

24 7. Code section 1025.3 provides, in pertinent part, that the Board may request  
25 the administrative law judge to direct a licensee found to have committed a violation or  
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
27 and enforcement of the case.  
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1 **BACKGROUND INFORMATION**

2 8. On or about September 25, 2004, while employed as a traveling nurse by  
3 Cross-Country TravCorps of Boca Raton, Florida, Respondent was assigned to the pediatric  
4 intensive care unit at Children's Hospital of Central California, located in Madera, California.  
5 Respondent was caring for a 2 ½ month old infant who was eight weeks premature, with a  
6 history of gastroesophageal reflux, aspiration, umbilical hernia, bilateral cystoceles, chronic lung  
7 disease, hypoxemia, and apnea and bradycardia related to being upset and crying. While caring  
8 for the infant, Respondent placed the infant on a bed face up to remove the infant's soiled diaper.  
9 Respondent held the infant's feet approximately 12 inches off the bed so he could clean the  
10 infant. Respondent lost his grip of the infant's legs, at which time the infant's legs fell to the  
11 bed. The infant was upset and cried for approximately three minutes and then went into  
12 respiratory arrest. The infant was resuscitated and recovered.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Incompetence)**

15 9. Respondent is subject to discipline under Code section 2761(a), on the  
16 grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that on or about  
17 September 25, 2004, while employed as a traveling nurse by Cross-Country TravCorps of Boca  
18 Raton, Florida, and assigned to the pediatric intensive care unit at Children's Hospital of Central  
19 California, located in Madera, California, Respondent was incompetent, in that while changing a  
20 2 ½ month old infant's diaper, Respondent held the infant's legs 12 inches off of the bed and lost  
21 grip of the infant's legs, causing the infant's legs to fall to the bed. The event upset the infant,  
22 who had a documented history of apnea and bradycardia due to emotional upset/crying, as more  
23 particularly set forth above in paragraph 8.

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PRAYER


**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 546059, issued to John S. Kerr;

2. Ordering John S. Kerr, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/5/09

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SA2008300954

Accusation (kdg) 12/29/08

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